



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-HQ-ES-2021-0138; FF09E21000 FXES1111090FEDR 223]

RIN 1018-BG58

Endangered and Threatened Wildlife and Plants; Adding Rice's Whale to and Updating Three Humpback Whale Entries on the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in accordance with the Endangered Species Act of 1973, as amended (Act), are amending the List of Endangered and Threatened Wildlife (List) by adding Rice's whale (*Balaenoptera ricei*). We are also updating the entries for the Central America, Mexico, and Western North Pacific distinct population segments (DPSs) of humpback whales (*Megaptera novaeangliae*) to reflect the designation of critical habitat for these DPSs. These amendments are based on previously published determinations by the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for these species.

DATES: *Effective date:* This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Applicability date: The Rice's whale listing was applicable as of October 22, 2021. The humpback whale critical habitat designations were applicable as of May 21, 2021.

FOR FURTHER INFORMATION CONTACT: Caitlin Snyder, Chief, Branch of Domestic Listing, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2171.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Act (16 U.S.C. 1531 *et seq.*) and Reorganization Plan No. 4 of 1970 (35 FR 15627; October 6, 1970), NMFS has jurisdiction over the marine taxa specified in this rule. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as an endangered species or a threatened species. Under section 4(a)(3)(A)(i) of the Act, NMFS must designate any habitat of endangered or threatened species which is then considered to be critical habitat. NMFS makes these determinations and critical habitat designations via its rulemaking process. We, the Service, are then responsible for publishing final rules to amend the List in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11(h).

On December 8, 2016, NMFS published a proposed rule to list the Gulf of Mexico Bryde's whale as an endangered species (81 FR 88639). NMFS solicited public comments on the proposed rule for 75 days (81 FR 88639, December 8, 2016; 81 FR 92760, December 20, 2016; 82 FR 9707, February 8, 2017) and accepted public comments during a public hearing on January 19, 2017. NMFS addressed all public comments received in response to the proposed rule in its April 15, 2019, final rule (84 FR 15446) to list the Gulf of Mexico Bryde's whale as an endangered species. NMFS determined that the Gulf of Mexico Bryde's whale is an unnamed subspecies of Bryde's whales (*Balaenoptera edeni*). The listing of the Gulf of Mexico Bryde's whale went into effect on May 15, 2019. We did not publish an administrative action at that time to add the Gulf of Mexico Bryde's whale to the List at 50 CFR 17.11(h).

On August 23, 2021, NMFS published a direct final rule (86 FR 47022) to revise the taxonomy and common name of *Balaenoptera edeni* (*unnamed subspecies*; Bryde's Whale – Gulf of Mexico subspecies) to reflect the most recently accepted scientific name, in accordance with 50 CFR 224.101(e). Based on the best scientific data available at that time, NMFS determined that revising the entry at 50 CFR 224.101(h) was warranted as follows: change the common name from Bryde's whale (Gulf of Mexico subspecies) to Rice's whale, change the

scientific name from *Balaenoptera edeni* (unnamed subspecies) to *Balaenoptera ricei*, and change the description of the listed entity from Bryde's whales that breed and feed in the Gulf of Mexico to "wherever found." NMFS provided an opportunity for the public to submit significant adverse comments in response to the direct final rule; they received none. The direct final rule went into effect on October 22, 2021. By publishing this final rule, we are taking the necessary administrative step to amend the List at 50 CFR 17.11(h) to include the Rice's whale.

We are also updating the entries on the List for the Central America, Mexico, and Western North Pacific DPSs of humpback whales to reflect the designation of critical habitat for these three DPSs. On October 9, 2019, NMFS published a proposed rule (84 FR 54354) identifying critical habitat for these three DPSs of humpback whales and solicited public comments on the proposed rule through January 31, 2020 (see 84 FR 65346, November 27, 2019). NMFS also solicited public comments at six public hearings (84 FR 55530, October 17, 2019; 84 FR 65346, November 27, 2019). NMFS addressed all public comments received in its April 21, 2021, final rule (86 FR 21082) designating critical habitat for these three DPSs.

The humpback whale critical habitat designations went into effect on May 21, 2021. By publishing this final rule, we are taking the necessary administrative step to codify these changes in the List at 50 CFR 17.11(h).

Administrative Procedure Act

Because NMFS provided an opportunity for public comment on the proposed rules for these taxa, and because this action of the Service to amend the List in accordance with the determinations by NMFS is nondiscretionary, the Service finds good cause that the notice and public comment procedures of 5 U.S.C. 553(b) are unnecessary for this action. We also find good cause under 5 U.S.C. 553(d)(3) to make this rule effective immediately. The NMFS rules extended protection under the Act to these species by listing Rice's whale in 50 CFR part 224 and designating critical habitat for the Central America, Mexico, and Western North Pacific DPSs of humpback whales in 50 CFR part 226; this rule is an administrative action to add one

species to, and update the entries of three species on, the List at 50 CFR 17.11(h). The public would not be served by delaying the effective date of this rulemaking action.

Required Determinations

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the *Federal Register* on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the CFR, as set forth below.

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. Amend §17.11, in paragraph (h), the List of Endangered and Threatened Wildlife, under MAMMALS, by:

a. Revising the entries for “Whale, humpback [Central America DPS],” “Whale, humpback [Mexico DPS],” and “Whale, humpback [Western North Pacific DPS];” and

b. Adding an entry in alphabetical order for “Whale, Rice’s”.

The revisions and addition read as follows:

§ 17.11 Endangered and threatened wildlife.

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(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS * * * * *				
Whale, humpback [Central America DPS]	<i>Megaptera novaeangliae</i>	Central America DPS - see 50 CFR 224.101	E	35 FR 8491, 6/2/1970; 35 FR 18319, 12/2/1970; 81 FR 62260, 9/8/2016; ^N 81 FR 93639, 12/21/2016; 87 FR [INSERT <i>FEDERAL REGISTER</i> PAGE WHERE THE DOCUMENT BEGINS], [INSERT DATE OF PUBLICATION IN THE <i>FEDERAL REGISTER</i>]; 50 CFR 226.227. ^{CH}
Whale, humpback [Mexico DPS]	<i>Megaptera novaeangliae</i>	Mexico DPS - see 50 CFR 223.102	T	35 FR 8491, 6/2/1970; 35 FR 18319, 12/2/1970; 81 FR 62260, 9/8/2016; ^N 81 FR 93639, 12/21/2016; 87 FR [INSERT <i>FEDERAL REGISTER</i> PAGE WHERE THE DOCUMENT BEGINS], [INSERT DATE OF PUBLICATION IN THE <i>FEDERAL REGISTER</i>]; 50 CFR 223.213; 50 CFR 223.214; 50 CFR 226.227. ^{CH}
Whale, humpback [Western North Pacific DPS]	<i>Megaptera novaeangliae</i>	Western North Pacific DPS - see 50 CFR 224.101	E	35 FR 8491, 6/2/1970; 35 FR 18319, 12/2/1970; 81 FR 62260, 9/8/2016; ^N 81 FR 93639, 12/21/2016; 87 FR [INSERT <i>FEDERAL REGISTER</i> PAGE WHERE THE DOCUMENT BEGINS], [INSERT DATE OF PUBLICATION IN THE <i>FEDERAL REGISTER</i>]; 50 CFR 224.103; 50 CFR 226.227. ^{CH}
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Whale, Rice's	<i>Balaenoptera ricei</i>	Wherever found	E	84 FR 15446, 4/15/2019; 86 FR 47022, 8/23/2021; ^N 87 FR [INSERT <i>FEDERAL REGISTER</i> PAGE WHERE THE DOCUMENT BEGINS], [INSERT DATE OF PUBLICATION IN THE <i>FEDERAL REGISTER</i>].
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Martha Williams,
*Principal Deputy Director,
Exercising the Delegated Authority of the Director,
U.S. Fish and Wildlife Service.*

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